TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1216.

THOMAS S. HUCLESS, PLAINTIFF IN ERROR,

vs.

JOHN K. CHILDREY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED SEPTEMBER 2, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 3, 1889.

1 In the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, July 3d, 1889.

THOS. S. HUCLESS
vs.
JOHN K. CHILDREY. } No. 1625. Trespass on the Case.

Be it remembered that heretofore, to wit, on the 4th day of May, 1889, came Thos. S. Hucless, by counsel, and sued out of the clerk's office of the circuit court of the United States for the eastern district of Virginia, at Richmond, a summons against John K. Childrey; which summons is in the words following, to wit:

Summons.

Circuit Court of the United States of America, Eastern District of Virginia, *ss:*

The President of the United States of America to the marshal of the eastern district of Virginia, Greeting:

We command you that you summon John K. Childrey, if he shall be found in your district, to be and appear at the clerk's office of our circuit court of the United States for the eastern dis-
2 trict of Virginia, at rules, to be holden at the said clerk's office, in the custom-house, in the city of Richmond, in the district aforesaid, on the first Monday of May next, to answer unto Thomas S. Hucless in a plea of trespass on the case, to his damage, as he alleges, of six thousand dollars; and have you then and there this writ.

Witness the Hon. M. W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond, this 4th day of May, in the year of our Lord one thousand eight [SEAL.] hundred and eighty-nine, and of our Independence the 113th year.

M. F. PLEASANTS, *Clerk.*

Marshal's Return.

Executed this 4th day of May, 1889, by delivering to Jno. K. Childrey, the within-named defendant, in person, a true copy of this writ; also a copy of declaration.

JNO. H. OVERBEY,
Special Deputy Marshal.

And on the same day, to wit, the 4th day of May, 1889, the plaintiff filed his declaration in the above-entitled cause as follows:

Declaration.

THOS. S. HUCLESS
vs.
JNO. K. CHILDREY. } Trespass on the Case.

3 Thomas S. Hucless, plaintiff, complains of John K. Childrey, defendant, of a plea of trespass on the case for this, to wit, that the plaintiff is a citizen of the United States and of the State of Virginia, and is a resident of the city of Richmond, Virginia, which has a population exceeding fifty thousand inhabitants; that plaintiff desired and intended to open and conduct the business of selling by retail wine, ardent spirits, malt liquors, or any mixtures of any of them, at number 405 West Leigh street, in said city, for one year from the first day of May, 1889; that plaintiff is a fit person to conduct said business, and he intended to keep an orderly house, and the place where he intended to conduct said business is a suitable, convenient, and appropriate place for conducting such business; that by force of the statute law of Virginia a person who desires and intends to conduct the business of selling by retail wine, ardent spirits, malt liquors, or any mixtures of any of them, must first apply to the commissioner of the revenue for the city or county where it is proposed to conduct such business for a license therefor, who shall ascertain the amount to be paid by such person and give him a certificate specifying the same, and such per-
4 son shall therefor make a deposit with the treasurer or other collecting officer of the said city or county of the amount so ascertained, and shall take from such treasurer or other collecting officer a receipt for the deposit so made, endorsed on said certificate furnished by the said commissioner of the revenue, showing that such deposit has been made, or otherwise he shall deposit with the treasurer of such city or county the amount of tax assessed by law for the license tax on said business, and thereupon he shall make application in writing for a license for such business to the commissioner of the revenue for such city or county, accompanied by said certificate of said treasurer, in which application shall be stated the residence of the applicant, the nature of the business, where it is proposed to be conducted, and the amount of tax prescribed by law, but in either event the person desiring to conduct said business is forbidden by said statutes to conduct said business as plaintiff intended to conduct until he shall have appeared before the judge of the corporation or county court, and have proved to him that he has made said deposit, that he is a fit person to conduct such business, that he will keep an orderly house, and that the place at which it is to be conducted is a suitable, convenient, and appropriate place for conducting such business; that
5 John K. Childrey is the treasurer of Richmond, and as such collector of taxes and license taxes due to the State of Virginia, and R. B. Munford is the commissioner of the revenue for the said city; that the license tax imposed by the laws of Virginia

to be paid to her for the business of selling by retail for one year wine, ardent spirits, malt liquors, or any one of them, in cities of more than one thousand inhabitants, is one hundred and twenty-five dollars; that on the third day of May, 1889, plaintiff applied to the commissioner of the revenue for the city of Richmond to ascertain the amount to be paid by him to said State as his license tax for selling by retail for one year wine, ardent spirits, malt liquors, or any mixture of any one of them, and said commissioner gave to him a certificate specifying the same as $125.00, and plaintiff then and there paid him his fee for said certificate of seventy-five cents; that thereupon, on the same day, plaintiff presented said certificate to said Childrey, treasurer, and tendered to him in payment of said license tax one hundred and twenty-three dollars in coupons and two dollars in lawful money of the United States, and demanded from him a receipt stating that he had deposited with him one hundred and twenty-five dollars in said coupons and *and* money;
6 that said Childrey refused to receive said coupons and money, and refused to give plaintiff said receipt; that each one of said coupons was cut from a bond issued by the State of Virginia under the provisions of an act of her assembly approved March 30th, 1871, entitled "An act to provide for the funding and payment of the public debt," and each one was overdue and past maturity, and each one bore upon its face the contract of the State of Virginia that it would be received in payment of all taxes, debts, dues, and demands due to said State.

That thereafter, on said 3d day of May, 1889, plaintiff stated to said Childrey, treasurer, that he desired and intended to conduct the business of selling by retail for one year wine, ardent spirits, malt liquor, or any mixture of any one of them, at 405 West Leigh street, and he then tendered to him in payment of the license tax due to the State of Virginia on said business for one year one hundred and twenty-three dollars in coupons and two dollars and seventy-five cents in lawful money of the United States; that each one of said coupons was cut from a bond issued by the State of Virginia,
7 and each one was overdue, and each one bore upon its face the contract of the State of Virginia that it would be received in payment of all taxes, debts, dues, and demands due said State; that said bonds were issued under an act of the General Assembly of Virginia, approved March 30th, 1870, entitled "An act to provide for the funding and payment of the public debt;" that at the same time plaintiff demanded of said Childrey, treasurer, a certificate stating that he, plaintiff, had deposited with him, Childrey, one hundred and twenty-five dollars; that said Childrey refused to receive said coupons and money and refused to give plaintiff said certificate demanded; that thereafter, on the same day, plaintiff made application in writing, which stated his residence, the nature of his business, the place where it was proposed to conduct the same, and the amount of tax prescribed by law, to the commissioner of the revenue of said city and demanded that he should deliver to him a paper stating as follows: "I find the within application in due form and accompanied with the certificate of the treasurer of the city of

Richmond that the sum of one hundred and twenty-five dollars and seventy-five cents has been deposited with him;" that
8 said commissioner of the revenue refused to deliver to plaintiff said paper; that the said treasurer, Childrey, refused to receive said coupons and money in both said cases because sections 399, 536, and 538 of the Code of Virginia of 1887 forbade him to receive them; that all three of said sections are repugnant to section ten of article one of the Constitution of the United States, and therefore this case arises under said Constitution, and the said Childrey well knew that they are repugnant to said Constitution; that he obeyed the commands of said sections and declined to follow the mandate of said Constitution because he belongs to and is a member of a political party which controls the government of the State of Virginia, which is seeking and endeavoring to destroy said State's tax-receivable coupons, and his action in refusing the same was therefore malicious; that by force of the statute law of Virginia plaintiff would have been liable to indictment and severe penalties if he had proceeded to open and conduct his said business before he had satisfied the judge of the corporation or hustings court of the city of Richmond that he was a fit person to conduct said business, that he would keep an orderly house, and that the place at which it was proposed to conduct said business was a suitable, con-
9 venient, and appropriate place for conducting said business, and plaintiff could not apply to said court to enter on said enquiries until he presented to said court a receipt from said Childrey for said deposit tendered endorsed on the certificate furnished by the commissioner of the revenue or the certificate of the commissioner of the revenue, set out above, endorsed on the receipt of said Childrey, treasurer, as set out above; by all of which the plaintiff is damaged $6,000.00, and therefore he sues.

WM. L. ROYALL.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the United States on the 1st Monday of May, 1889.

Common Order.

The defendant not appearing, on motion of the plaintiff, by his attorney, it is ordered that judgment be awarded to the plaintiff against the defendant for what damages he may have suffered by reason of the trespass in the declaration mentioned, unless the said defendant shall appear and plead to issue at the next rules.

Common Order Confirmed.

And at another day, to wit, at rules held in the clerk's office of the said United States circuit court on the first Monday of
10 June, 1889.

The defendant still not appearing, on motion of the plaintiff, by his attorney, it is ordered that the last order made in this cause be confirmed, and that the plaintiff's damages be ascertained by a jury at the next term.

And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond on the 3d day of July, 1889, came the defendant, by his attorney, and filed demurrer to the plaintiff's declaration, as follows:

Defendant's Demurrer.

THOMAS S. HUCLESS
vs.
JOHN K. CHILDREY.

The defendant, John K. Childrey, demurs to the plaintiff's declaration, and assigns as the reason therefor that the business of selling wine, ardent spirits, malt liquor, or any mixture of any of them, in the State of Virginia is a business over which said State has complete and full control, and she may, in her discretion, absolutely prohibit the sale thereof within the limits of her territory. This being so, she may permit it upon such terms as she sees fit,
11 and may therefore require that the license tax upon the business shall be paid in current money and not in her coupons.

JOHN K. CHILDREY,
By His Attorney.

And the plaintiff joins in the above demurrer.

PLAINTIFF,
By his attorney, WM. L. ROYALL.

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 3d day of July, 1889.

THOS. S. HUCLESS
vs.
JOHN K. CHILDREY. } No. 1625. Trespass on the Case.

This day came the parties, by their attorneys, and the defendant demurred to the plaintiff's declaration and the plaintiff joined in said demurrer; and the court, having considered the same, is of opinion that said demurrer should be sustained. It is therefore considered that the said demurrer be sustained; that the de-
12 fendant go hereof without day, and that the plaintiff pay to the defendant his costs of this action.

RO. W. HUGHES, *Judge.*

13 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Thomas S. Hucless, plaintiff, and John K. Childrey, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we,

being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Eastern District of Virginia.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 12th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States, East. Dist. of Va.

Allowed by—
RO. W. HUGHES,
U. S. Dist. Judge.

14 I, M. F. Pleasants, clerk, hereby certify that a true copy of the above writ of error remains on file in the papers of the cause in my office.

M. F. PLEASANTS, *Clerk.*

15 The United States of America to John K. Childrey. Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Virginia, wherein Thomas S. Hucless is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal United States Circuit Court, Eastern District of Virginia.]

RO. W. HUGHES,
U. S. Dist. Judge.

16 On this 19th day of July, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared Thos. E. Ballard, spec. deputy U. S. mar., before me, the subscriber

and makes oath that he delivered a true copy of the within citation to John K. Childrey.

THOS. E. BALLARD,
Spe. Dep'ty U. S. M.

Sworn to and subscribed the 19th day of July, A. D. 1889.

M. F. PLEASANTS, *Clerk.*

17 *Marshal's Return.*

Executed this 19th day of July, 1889, by delivering to John K. Childrey a true copy of the within citation.

THOS. E. BALLARD,
Spe. Dep'ty U. S. M.

I, M. F. Pleasants, clerk, hereby certify that a true copy of the above citation remains on file in the papers of this cause in my office.

M. F. PLEASANTS, *Clerk.*

18 Know all men by these presents that we, Wm. L. Royall and A. B. Guigon, are held and firmly bound unto John K. Childrey in the full and just sum of five hundred dollars, to be paid to the said John K. Childrey, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12 day of July, A. D. 1889.

Whereas lately, at a circuit court of the United States for the eastern district of Virginia, in a suit depending in said court between Thomas S. Hucless, plaintiff, and John K. Childrey, defendant, a judgment was rendered against the said Hucless; and the said Hucless having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Childrey, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if
19 the said Hucless shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. L. ROYALL. [SEAL.]
A. B. GUIGON. [SEAL.]

The foregoing bond is approved.

RO. W. HUGHES,
U. S. Dist. Judge.

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the above is a true copy of the bond filed and remaining in the papers of the cause in the said court.

M. F. PLEASANTS, *Clerk.*

20 Circuit Court of the United States for the Eastern District of Virginia.

THOS. S. HUCLESS
v.
JOHN K. CHILDREY.

Assignment of Errors.

Plaintiff in error assigns for error the action of the circuit court in sustaining the demurrer to his declaration.

THOS. S. HUCLESS,
By WM. L. ROYALL,
His Att'y.

21 UNITED STATES OF AMERICA,
Eastern District of Virginia, } *ss:*

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceeding- of the cause therein named as the same remains on the files in my said office.

Seal United States Circuit Court, Eastern District of Virginia.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, this 19th day of July, A. D. 1889.

M. F. PLEASANTS, *Clerk.*

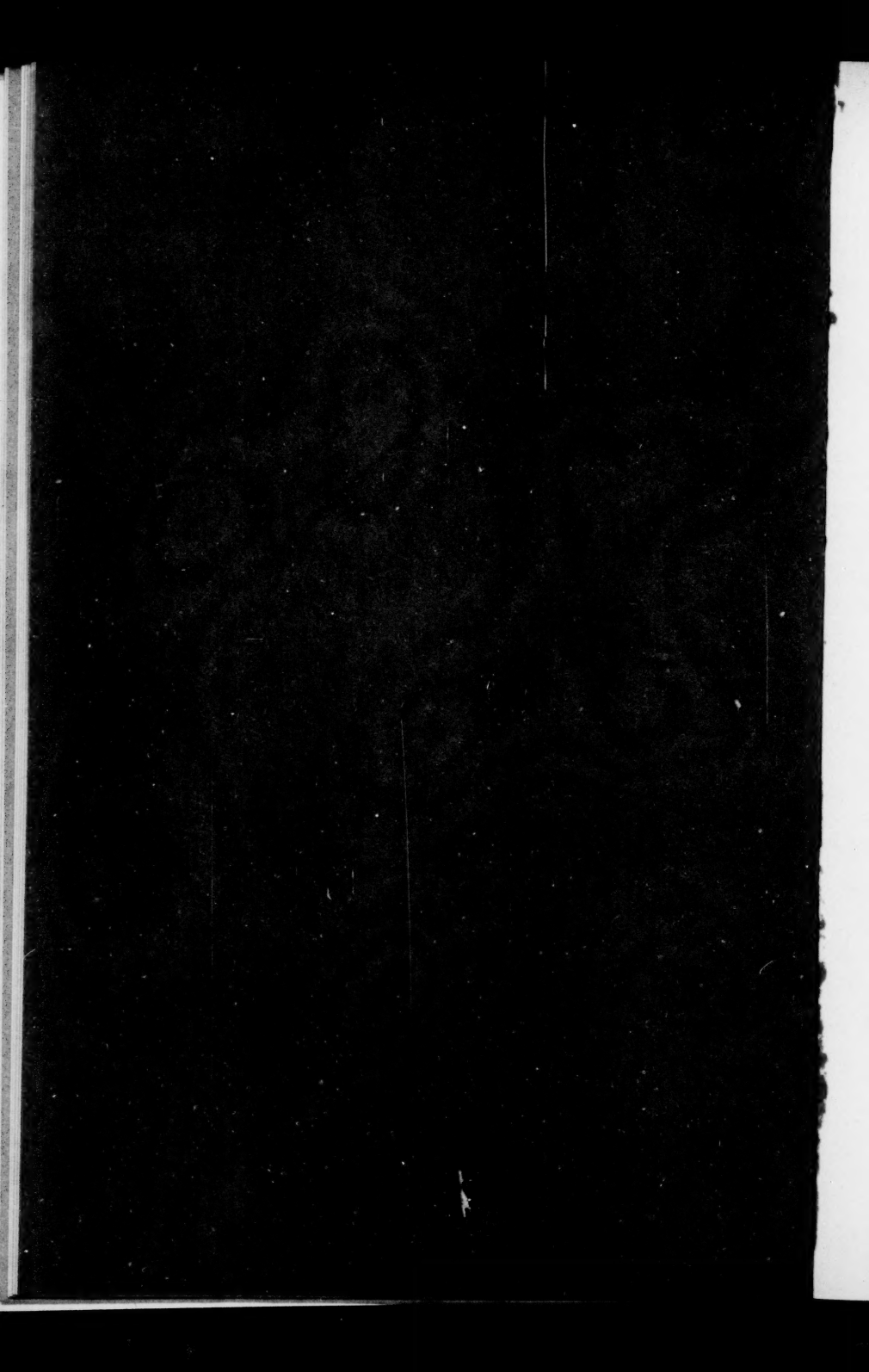
Endorsed on cover: E. Virginia C. C. U. S. No. 1216. Thomas S. Hucless, plaintiff in error, *vs.* John K. Childrey. Filed September 2, 1889.

SEP 2 0 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

EX PARTE LEWIS BROWN.—No. 1,217.

Brief for Appellant.



Supreme Court of the United States.

EX PARTE LEWIS BROWN.—No. 1,217.

Brief for Appellant.

STATEMENT OF THE CASE.

This is an appeal from an order and judgment of the Circuit Court of the United States for the Eastern District of Virginia, refusing to discharge the appellant from custody upon the return to a writ of *habeas corpus* awarded the appellant upon his petition for the writ. The petitioner showed that he was sentenced, on the 2d day of July, 1889, by the Hustings Court of the city of Richmond to pay a fine of twenty-five dollars for a contempt of court, and to be confined in the jail of the city of Richmond until the fine and costs were paid. The costs amounted to one dollar and seventy cents. He showed further, that on the 3d day of July he tendered to the clerk of the said court, who is the proper officer to receive the fine and costs, eighteen dollars in the State's over-due coupons, and eight dollars and seventy cents in lawful money, which the clerk refused to receive, because of certain acts of Assembly specified further on. That he thereupon tendered the same coupons and money to R. A. Carter, sergeant and jailer of said city, who also refused them on account of the same statutes. The coupons became due and receivable for demands due said State prior to July 1, 1888. The court awarded the writ upon this petition, and the sergeant made

return admitting the tender, as claimed by the petitioner. In his return he denied that the coupons were genuine coupons, legally receivable for debts and demands due the State, but he stated further that section 399 of the Code of Virginia forbade him to receive them, even if genuine. That section 406 of the Code permitted and required him to receive them for identification and verification, but that section 415 of the Code provided that no petition should be filed or other proceeding had to try whether any coupons were genuine where they became due prior to July 1, 1888, unless such petition were filed or proceeding had within one year after the 1st of July, 1888, and petitioner had filed his petition and commenced his proceeding more than one year after July 1, 1888. He therefore conceived it his duty to refuse to receive the tender. The petitioner demurred to this return, upon the ground that section 415 of said Code was repugnant to the Constitution of the United States. The court entered a judgment reciting that, in its opinion the question raised by the papers and pleadings was, whether section 415 of the Code of Virginia of 1887 was or was not repugnant to the Constitution of the United States, and that, as this was a question of great importance, the court was of opinion that it should be decided, in the first place, by the Supreme Court of the United States. It therefore denied the petition and refused to discharge the petitioner, but allowed him an appeal from its order and judgment and admitted him to bail until this court should decide the question.

The sections of the Code of 1887 referred to read as follows:

"SEC. 399. *Gold, Silver, or Bank Notes, only, to be Received for Taxes; Officer not to Convert Money into Coupons.*—It shall not be lawful for any officer charged with the collection of taxes, debts, or other demands of the State, to receive in payment thereof anything else than gold or silver coin, United States treasury notes, or national bank notes; or to convert any moneys received by him into coupons, either directly or indirectly, by purchase, exchange, or otherwise; but he shall account to the treasury of the State in money, or by check or draft, for all taxes, debts, or other demands of the State received by him in money; nor shall it be lawful for such

officer to purchase coupons for the purpose of the sale thereof, or to sell the same during his continuance in office."

"SEC. 406. *Tax Collector to Receive Coupons for Identification and Verification.*—Whenever any tax-payer, or his agent, shall tender to any person whose duty it is to collect or receive taxes, debts, or other demands due the State, any papers or instruments printed, written, or engraved, purporting to be coupons detached from bonds issued under the act entitled 'An act to provide for the funding and payment of the public debt,' approved March thirtieth, eighteen hundred and seventy-one, or from bonds issued under the act entitled 'An act to provide a plan of settlement of the public debt,' approved March twenty-eight, eighteen hundred and seventy-nine, in payment of any such taxes, debts, or demands, the person to whom such papers are tendered shall receive the same and give the party making the tender a receipt, stating that he has received them for the purpose of identification and verification."

"SEC. 415. *Limitation to Proceeding to try Genuineness of Coupon.*—From and after the first day of July, eighteen hundred and eighty-eight, no petition shall be filed or other proceeding had to try whether any paper printed, written, engraved, or lithographed, purporting to be a coupon detached from or attached to any bond of the State, is a genuine coupon, legally receivable for taxes, debts, and demands of the State, except as follows: Where such paper purports to have first become so receivable prior to the first day of July, eighteen hundred and eighty eight, the petition may be filed or other proceeding had within one year from the first day of July, eighteen hundred and eighty-eight, and not after; and where the paper purports to have first become so receivable after the first day of July, eighteen hundred and eighty-eight, the petition may be filed or other proceeding had within one year from the time such paper became so receivable, and not after."

The court should have made an order that section 415 is repugnant to the Constitution of the United States and void, and therefore no obstacle to the petitioner proving that his coupons were genuine, that an issue be made upon the question of their genuineness, and that if the petitioner proved

them genuine that he be discharged. The act of Congress requires that no formalities shall prevent the true issue being arrived at. (See sec. 761, Revised Statutes U. S.)

ARGUMENT.

The provisions of section 415 are, that no petition shall be filed or other proceeding had after July 1, 1888, to try whether any coupon is genuine, except as follows: If the coupon became due prior to July 1, 1888, the proceeding must be had within one year from July 1, 1888; if the coupon became due after July 1, 1888, the proceeding must be had within one year from the time it became due—that is, as to all coupons that became due *prior* to July 1, 1888, there is a statute of limitations, unless they are utilized within one year from July 1, 1888. As to all becoming due *after* July 1, 1888, there is a statute of limitations, unless they are utilized within one year from the day they become due; although the coupon, on its face, is receivable at any time in the future, and no right is reserved to the State to limit the time in which they may be received.

The Virginia repudiators who drew this statute plainly had in view the decisions of this court holding that a reasonable statute of limitations does not impair the obligation of a contract. They hoped to find shelter behind those decisions for their determination to repudiate the coupons.

But those decisions are based upon the proposition that the creditor has his option whether he will sue or not, and the peace and order of society demand that he shall assert his claim, if he proposes to do so, within a reasonable time after it becomes due. Statutes of limitation are statutes of repose, intended to relieve society from the annoyance and distress of investigating the merits of stale claims after all evidences of the very truth of the facts have been mislaid or lost.

But here, instead of encouraging an early use of her coupons, the State imposes every possible obstacle in the way of any use of them at all.

Acts 1881–'2, Code 1887, section 399, forbids her officers to pay them as interest promises when they become due. It is

as follows: "It shall not be lawful for any officer charged with the collection of taxes, debts, or other demands of the State, to receive in payment thereof anything else than gold or silver coin, United States treasury notes, or national bank notes."

This act is now section 399 of the Code of 1887, already quoted. Then, having made it impossible for the holder of the coupon to collect it in money, or to pay taxes with it, she provides that unless he utilize it within one year from the time it becomes due he shall make no use of it at all. This is a statute of repose with a vengeance—with this difference from the others mentioned, that, instead of being a statute of repose for society, it is a statute of eternal repose for the coupon.

But she has pressed her eagerness for the repose of the coupon still further. Even if your petition is filed, or the proceeding had to prove them genuine within the year, yet you must produce the bonds from which they came at the trial, or else judgment must go against you. How are the holders of those detached from the bonds to prove theirs, even if they endeavor to do so within a year?

There are some $5,000,000 of over-due coupons now in the markets of the world, and the State's revenues are about $3,000,000 annually. Suppose the coupon holders were to succeed in paying every dollar of this year's revenue with coupons, still there would be $2,000,000 which could not possibly be used in any way whatever. This is no case of a languid creditor sleeping on his rights, but one of a most active one endeavoring to assert them, but retarded in every possible way by the debtor, who then complains that his creditor will not move.

The judgment should be reversed, with directions that the petitioner be allowed to prove his coupons genuine by any appropriate evidence, and that if he make such proof that he be discharged; otherwise that he be remanded to jail.

WM. L. ROYALL,
for Appellant.

Office Supreme Court, U. S.
FILED.
OCT 21 1889
JAMES H. McKENNEY,
CLERK.

IN THE
Supreme Court of the United States.

LEWIS BROWN. No. 1217.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

BRIEF OF R. A. AYERS, ATTORNEY-GENERAL OF VIRGINIA, AND J. RANDOLPH TUCKER, FOR THE STATE OF VIRGINIA.

STATEMENT.

The appellant was sentenced by the hustings court of the city of Richmond, in July, 1889, to pay a fine and costs amounting to the sum of $26 70, and was committed to jail until he should pay said fine and costs. He tendered to the proper officer eighteen dollars in coupons of the State receivable for all taxes, debts and demands due the State, and $8 70 in lawful money of the United States in payment of said fine and costs. The coupons tendered had matured prior to the first day of July, 1888, and the officer refused to receive them because of the provisions of section 415 of the Code of Virginia, which is as follows:

"From and after the first day of July, 1888, no petition shall be filed or other proceeding had to try whether any paper printed, written, engraved, or lithographed, purporting to be a coupon detached from or attached to any bond of the State is a genuine coupon legally receivable for taxes, debts and demands of the State, except as fol-

lows: Where such paper purports to have first become so receivable prior to the first day of July, 1888, and not after; and where the paper purports to have first become receivable after the first day of July, 1888, the petition may be filed or other proceeding had within one year from the time such paper became receivable, and not after."

The appellant then applied to the circuit court of the United States for a writ of habeas corpus, which was granted. Upon the hearing the court refused to discharge him and remanded him to the custody of the sergeant of the city. From this judgment an appeal was prayed for and granted to this court, and regularly matured here.

ARGUMENT.

The real question involved and intended to be raised in the record is the constitutionality of section 415 of the Code of Virginia. The act which was incorporated into the Code, forming the said section, was approved February 26th, 1886—more than three years before the tender in the present case.

The coupon holder was warned in advance that from and after July 1, 1888, he would only have one year within which to institute proceedings to have his coupons declared genuine and received for taxes or other debts or demands due the commonwealth. The statutes deprive the coupon holder of no right which he enjoys under his contract. His coupon, if genuine, is received in a proper proceeding to enforce its payment. The courts of the State are open for the prosecution of his claim. If the State does not pay his interest coupons at maturity, he may institute suit and recover judgment against her so as to prevent the bar of the statute of limitation. Chapter 32 of the Code of Virginia continues in force statutes which have been upon the books for more than fifty years, under which any claimant may sue the State in the circuit court of the city of Richmond, and have the validity of his claim adjudicated. This is in addition to the other modes provided by which he may have the genuineness of his claim established.

"This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect; and it is difficult to see why if the legislature may prescribe a limitation where none existed before, it may not change one which has already

been established. The parties to a contract have no more a vested interest in a particular limitation which has been fixed than they have in an unrestricted right to sue." (Terry *vs.* Anderson, 5 Otto, 628.) In that case the statute of limitation had been twenty years at the date of the contract, and it was changed so as to require suit upon the obligation within nine months and seventeen days. The court held that the time was reasonable, and the failure to sue must be attributed to laches of the plaintiff and not to the law which it held constitutional. Indeed, the courts, in a long line of decisions, have sustained various statutes of limitation, and have invariably done so where the act gave reasonable opportunity for the institution of the suit before the bar became effective. The appellant seems to ignore the fact that the courts of the State have always been open to him, and in that way he could have obtained judgment against her for the amount of his claim.

"No class of laws is more universally sanctioned by the practice of nations and the consent of mankind, than laws which give peace and confidence to the actual possessor and tiller of the soil. Such laws have frequently passed in review before this court; and instances have occurred in which they have been particularly noticed as laws not to be impeached on the ground of violating private right. What right has anyone to complain, when a reasonable time has been given him, if he has not been vigilant in ascertaining his rights? All the reasonable purposes of justice are subserved if the courts of a State have been left open to the prosecution of suits for such a time as may reasonably raise a presumption in the occupier of the soil that the fruits of his labor are effectually secured beyond the chance of litigation. *Interest reipublicae ut finis sit litium* and *vigilantibus non dormientibus succurrit lex* are not among the least favored of the maxims of the law." (Hawkins *vs.* Barney, 5 Pet., 466.)

In Bronson *vs.* Kinsee, 1 How., 315, it is said: "For undoubtedly a State may regulate at pleasure the modes of proceedings in its courts in relation to past contracts as well as future. It may, for example, shorten the period of time within which claims may be barred by the statute of limitations. Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract." (Christmas *vs.* Russell, 5 Wall., 290; Jackson *vs.* Lamphire, 3 Peters, 280; John *vs.* Watterson, 17 Wall., 596.)

"It is a sound principle that where a statute of limitations pre-